

JUN 06 2006

EMPLOYER STATUS DETERMINATION
Transit Solutions Group, LLC

This is the determination of the Railroad Retirement Board concerning the status of Transit Solutions Group, LLC, as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding Transit Solutions was provided by John McHugh, counsel for Transit Solutions. According to Mr. McHugh, Transit Solutions will begin doing business mid-summer 2006, and will begin recruiting staff in April 2006. Mr. McHugh advised that the company wishes to hire experienced rail employees and, accordingly, it would be helpful to Transit Solutions to have its coverage under the Acts resolved so that it can attract applicants qualified to conduct railroad operations.

Transit Solutions is 51 percent owned by William J. Drunsic and 8 percent by Jeffrey Wilson. Mr. Drunsic owns the Nashville and Eastern Railroad Corporation, an employer under the Acts (B.A. No. 2592). Mr. Wilson and Mr. Drunsic also control the Nashville & Western Railroad Corp., also an employer under the Acts (B.A. No. 4544). Transit Solutions was formed to operate passenger services on the Nashville and Eastern's track between Nashville and Lebanon, Tennessee. Mr. McHugh stated that the Regional Transportation Authority awarded operation of the service to Mr. Drunsic's groups and Transit Solutions was created to operate the service. Mr. McHugh also advises that Transit Solutions will be performing freight service switching operations for the Nashville and Eastern.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain a substantially similar definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Before deciding whether Transit Solutions will be an employer under the Acts administered by the Board, we must address the issue of whether the Board should at this time issue a ruling or delay until Transit Solutions actually begins

operations. In cases in the past, the Board has provided coverage opinions with regard to future operations. See Keokuk Electric Railway, Inc., B.C.D. 01-83 (December 3, 2001), and Southern California Regional Rail Authority, B.C.D. 02-12 (February 12, 2002) (finding that the Dispatching Department would be covered beginning October 1, 2002). As in those cases, there is little doubt that Transit Solutions will begin operations in the summer of 2006. A decision by the Board will facilitate Transit Solutions being able to hire experienced railroad employees before it begins operations. Therefore, the Board will issue a decision regarding Transit Solutions at this time.

The evidence of record establishes that, based on its freight service switching operations, Transit Solutions is a rail carrier operating in interstate commerce. Accordingly, it is determined that Transit Services became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 1, 2006, the date as of which it plans to first hire employees. See Rev. Rul. 82-100 (1982-1 C.B. 155), wherein the Internal Revenue Service held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.

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